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7 IN RE PACIFIC FERTILITY CENTER  
8 LITIGATION

Case No. 18-cv-01586-JSC

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11 This Document Relates to: All Actions  
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21 **ORDER RE: CHART'S MOTION TO  
DISMISS**

22 Re: Dkt. No. 547  
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These consolidated cases arise out of a March 2018 incident involving a cryopreservation tank storing Plaintiffs' eggs and embryos. Chart Industries Inc., who manufactured the tank, is the sole remaining defendant in this action as the other defendants have all been compelled to arbitration. Following this Court's order denying Plaintiffs' motion for class certification, 133 class members filed individual actions, all of which have been consolidated under this lead case number. Chart has filed a motion to dismiss the 133 consolidated actions under Federal Rule of Civil Procedure 8.<sup>1</sup> (Dkt. No. 552.) Having considered the parties' briefs, the Court concludes that oral argument is unnecessary, *see* N.D. Cal. Civ. L.R. 7-1(b), and DENIES the motion to dismiss.

**DISCUSSION**

Chart moves to dismiss Plaintiffs' consolidated complaints for failing to comply with Rule 8's requirement that a complaint contain a "short and plain statement of the claim" citing *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996), and *Nevijel v. North Coast Life Ins.*

<sup>1</sup> All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. No. 553.)

1        *Co.*, 651 F.2d 671, 673 (9th Cir. 1981). (Dkt. No. 547 at 3.<sup>2</sup>) In particular, Chart contends that  
2 the complaints “are needlessly prolix in evidentiary detail, replete with redundancy and  
3 argumentative to the point of sensationalism.” (Dkt. No. 564 at 2:26-3:1.)

4        Plaintiffs’ 15-page complaints contain three claims for relief: (1) strict products liability -  
5 manufacturing defect; (2) strict products liability – design defect; and (3) negligent failure to  
6 recall. In support of these claims, Plaintiffs include detailed factual allegations regarding the tank,  
7 its functions, its alleged failure, and the alleged harm as a result of the failure. Because the parties  
8 have been actively engaged in discovery over the past year and a half, Plaintiffs are necessarily  
9 able to plead their factual allegations with more particularity than they did in the version of the  
10 second amended class action complaint filed over a year ago. (Dkt. No. 267.) While Plaintiffs are  
11 not required under Rule 8 to include such detailed allegations, the Court does not fault them for  
12 doing so.

13        Chart’s reliance on *McHenry* and *Nevijel* is misplaced. In those cases, the Ninth Circuit  
14 was reviewing district court orders dismissing complaints under Federal Rule of Civil Procedure  
15 41(b) for failure to comply with the courts’ orders to file an amended complaint that complied  
16 with Rule 8. *See McHenry*, 84 F.3d at 1177 (affirming dismissal of 37-page complaint containing  
17 two claims which were “set out in a single sentence thirty lines long, alleging numerous and  
18 different violations of rights, without any specification of which of the twenty named defendants  
19 or John Does is liable for which of the wrongs,” *id.* at 1174); *Nevijel*, 651 F.2d at 674 (affirming  
20 dismissal of “second complaint [which] was 23 pages long with 24 pages of addenda, named  
21 additional defendants without leave of court, and was equally as verbose, confusing and  
22 conclusory as the initial complaint”).

23        “[A] dismissal for a violation under Rule 8(a)(2), is usually confined to instances in which  
24 the complaint is so verbose, confused and redundant that its true substance, if any, is well  
25 disguised.” *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969) (internal citation and  
26 quotation marks omitted). It is a “harsh remedy,” and the court “should first consider less drastic

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28        <sup>2</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the  
29 ECF-generated page numbers at the top of the documents.

1 alternatives.” *McHenry*, 84 F.3d at 1178; *see also Hearns v. San Bernardino Police Dep’t*, 530 F.3d  
2 1124, 1130-33 (9th Cir. 2008). Under the circumstances here, the harsh remedy of dismissal is not  
3 warranted. While Chart may object to the dramatic nature of Plaintiffs’ allegations, it does not  
4 contend—nor could it—that it is unable to respond to Plaintiffs’ allegations because of the way  
5 they are pled. That it may be “difficult” to do so, does not warrant dismissal. (Dkt. No. 564 at 5.)  
6 Accordingly, Chart’s motion to dismiss is denied.

7 **CONCLUSION**

8 For the reasons stated above, Chart’s motion to dismiss is DENIED. Chart shall file its  
9 answer to the consolidated complaints in 14 days.

10 This Order disposes of Docket No. 547.

11 **IT IS SO ORDERED.**

12 Dated: October 5, 2020

13   
14 JACQUELINE SCOTT CORLEY  
15 United States Magistrate Judge